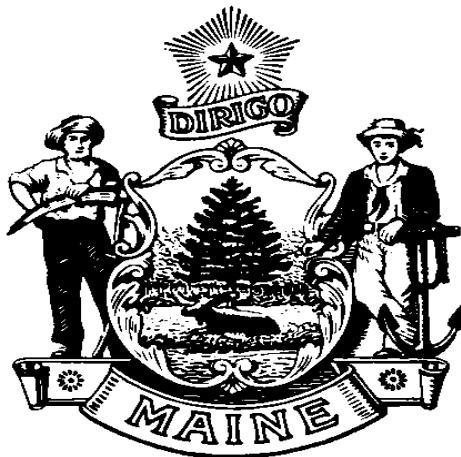


# **Rules Governing the Maine Registry of Certified Nursing Assistants (CNA Registry)**

**10-144 CMR Chapter 128**

Effective Date:



## **CNA Registry**

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## Table of Contents

<b>Section 1</b>	<b>Definitions</b>	<b>1-1</b>
1.1	Abuse	
1.2	Certified Nursing Assistant (CNA)	
1.3	CNA Registry	
1.4	Crimes: Class D and Class E	
1.5	Criminal Background Check	
1.6	Final Agency Action	1-2
1.7	Health Care Setting	
1.8	Misappropriation of Property	
1.9	Neglect	
1.10	Omnibus Budget Reconciliation Act of 1987 (OBRA '87)	
1.11	Registry of Certified Nursing Assistants (CNA Registry)	
1.12	State Survey Agency	
1.13	Training and Competency Evaluation Programs	
<b>Section 2.</b>	<b>Eligibility for Placement and Continued Listing on the CNA Registry....</b>	<b>2-1</b>
2.1	Provider verification of a CNA's listing.	
2.2	Placement on the CNA Registry	
2.3	CNAs trained in Maine	2-2
2.4	CNAs trained in another jurisdiction	2-4
2.5	Employment restrictions	2-6
2.6	Excluded from employment restrictions	2-7
<b>Section 3.</b>	<b>Training and Competency Programs for CNAs.</b>	<b>3-1</b>
3.1	Prescribed curriculum	
3.2	Training and testing options	
3.2.1	Maine CNA Training Program	
3.2.2	Bridge Examination	3-2
3.2.3	Test for non-traditional CNAs	
3.2.4	Certificate of Training	
3.3	CNAs employed by nursing facilities	3-3
<b>Section 4.</b>	<b>CNA Registry Operation</b>	<b>4-1</b>
4.1	Registry accessibility	
4.2	Registry administration	
4.3	Registry Content	4-2
<b>Section 5.</b>	<b>Denial or Removal from the CNA Registry</b>	<b>5-1</b>
5.1	Misrepresentation, deceit, or fraud on application or renewal form	
5.2	Nondisclosure of convictions is misrepresentation	
5.3	Fraud or deceit in obtaining a Certificate of Training	

<b>Section 6. Petitions and Appeals</b>	<b>6-1</b>
6.1 Petition for Reinstatement	
6.2 Petition for Removal of a Finding of Neglect	
6.3 Right to appeal	
6.4 Administrative Hearing	<b>6-2</b>
6.5 Recommended Decision	
6.6 Judicial Review	
<b>Statutory Authority</b>	<b>A-1</b>

**Section 1. Definitions.** As used in these rules, unless the context indicates otherwise, the following terms have the following meanings:

- 1.1. Abuse.** Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. 42 C.F.R. §488.301.
- 1.2. Certified Nursing Assistant (CNA).** A CNA is a person who performs selected nursing services under the supervision of a registered professional nurse. A CNA is a person who has successfully completed a Maine training program and holds a Certificate of Training, or a person who has been comparably trained in another jurisdiction or otherwise meets Maine's eligibility requirements for placement on the Registry.
  - 1.2.1 Non-traditional CNA.** A non-traditional CNA includes but is not limited to the following CNAs: a CNA trained in Maine who has not worked as a CNA for at least the preceding 24 months; a CNA who received training in another jurisdiction that is at least equal to the minimum number of training hours required by the Board of Nursing 02-380 C.M.R. Ch. 5 *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants*; and an individual trained as a CNA, or its equivalent, while serving in the United States Armed Services who completed training that is at least equal to the minimum number of training hours required by the Board of Nursing 02-380 C.M.R. Ch. 5 *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistant*.
- 1.3. CNA Registry.** The CNA Registry is a registry maintained by DHHS, Division of Licensing and Regulatory Services, that contains a list of active CNAs who are qualified to work in Maine, and a list of inactive CNAs who do not qualify for employment as a CNA in Maine at this time. The Registry also contains the following annotations: criminal convictions as required by law, documented findings by the state survey agency of substantiated complaints of abuse, neglect, or misappropriation of property of a patient, client or resident.
- 1.4. Crimes: Class D and Class E.** Pursuant to 17-A M.R.S.A. §§ 1252 (2) (D) and 1301 (1-A) (D), a Class D criminal offense is any criminal offense for which the maximum period of incarceration is a definite period of less than one year, a fine up to \$2000, or both. Pursuant to 17-A M.R.S.A. §§ 1252 (2) (E) and 1301 (1-A) (E), a Class E criminal offense is any criminal offense for which the maximum period of incarceration is a definite period not to exceed 6 months, a fine up to \$1000, or both. For similar crimes committed in other jurisdictions, the Maine CNA Registry applies 17-A M.R.S.A. §4-A (3) (D) and (E).
- 1.5. Criminal Background Check.** A criminal background check is the examination of an applicant's or a CNA's criminal history record including criminal convictions.

- 1.6. Final Agency Action.** Final agency action means a decision by the department which affects the legal rights, duties or privileges of specific persons, which is dispositive of all issues, legal and factual, and for which no further recourse, appeal or review is provided within the department. 5 M.R.S.A. §8002 (4).
- 1.7. Health Care Setting.** Health care settings include hospitals, nursing facilities, home health agencies, and assisted housing programs.
- 1.8. Misappropriation of Property.** For the purpose of these rules, misappropriation of property of a patient, client, or resident means the deliberate misplacement, exploitation, or wrongful temporary or permanent use, or damage, of belongings or money, or both, without consent.
- 1.9. Neglect.** For the purpose of these rules, neglect means a failure by inattentiveness, carelessness, or omission to provide for a patient's, client's or resident's needs, that threatens a patient's, client's or resident's health or welfare by physical or mental injury or impairment.
- 1.10. Omnibus Budget Reconciliation Act of 1987 (OBRA '87).** OBRA '87 is a federal law that required each state to have a CNA Registry and established federal minimum requirements for CNA training programs and competency evaluation testing. 42 C.F.R. 483.150-158.
- 1.11. Registry of Certified Nursing Assistants (CNA Registry).** See Section 1.3.
- 1.12. State Survey Agency.** Pursuant to 42 U.S.C. §§ 1395aa and 1396, the Maine state survey agency is the Department of Health and Human Services (DHHS), Division of Licensing and Regulatory Services.
- 1.13. Training and Competency Evaluation Programs.** Training and competency evaluation programs are approved programs that must be successfully completed before an individual qualifies to apply for listing on the CNA Registry. Maine training and competency evaluation programs must comply with OBRA '87. Training, testing and listing opportunities include, but are not limited to, the following:
- 1.13.1 Maine CNA training.** The Maine CNA training program, at a minimum, is a 150-hour training, including classroom instruction, skills laboratory and supervised clinical practice. Section 3.2.1.
- 1.13.2 Maine CNA test.** The Maine CNA test is a 2-part test including a written or oral examination, and a skills demonstration test given after an individual has successfully completed the Maine CNA Training. Section 3.2.1.4.

- 1.13.3 Bridge Examination.** The Bridge Examination is an examination taken by qualified CNAs trained in another jurisdiction who apply for placement on the Maine CNA Registry. Section 3.2.2.
- 1.13.4 Test for non-traditional CNAs.** The test for non-traditional CNAs is a test taken by qualified CNAs for placement on the Maine CNA Registry. Section 3.2.3.
- 1.13.5 Qualified nursing school student.** A qualified nursing school student is a currently enrolled nursing school student, or a former nursing school student, who has been issued a “Certificate of Equivalent Training” by the director of the nursing school, stating that the individual satisfactorily completed at least the equivalent of the Maine Board of Nursing (BON) prescribed CNA curriculum. The “Certificate of Equivalent Training” qualifies the individual to be placed on the list of active CNAs on the Registry, without further testing, if the Registry finds the individual is competent to function as a CNA. BON rules, 02-380 C.M.R. Ch. 5, sections 2 (E) (2) and 5 (A) (2). Section 2.2.3.

**Section 2. Eligibility for Placement and Continued Listing on the CNA Registry.**

**2.1 Provider verification of a CNA's listing.** Before hiring an individual to work as a CNA, a health care institution, facility or organization, must, at a minimum, contact the Maine CNA Registry to verify that the CNA is on the list of active CNAs on the Registry and has no disqualifying annotations.

**2.1.1** Multi-state registry verification by nursing facilities. In addition to the requirements of Section 2.1, nursing facilities must make a reasonable effort to obtain information pertaining to an individual from each State CNA Registry which is likely to contain such information (OBRA '87).

**2.1.2** Exception: four-month employment in a nursing facility. A nursing facility may employ an individual who is not listed on the CNA Registry to work as a CNA in Maine for a maximum of 4 months, if the individual submits documentation of satisfactory participation in an approved training program.

**2.2 Placement on the CNA Registry.**

**2.2.1** No CNA fee. DHHS, Division of Licensing and Regulatory Services, may not charge an applicant or a CNA a fee related to the application and the biennial renewal for listing on the Maine Registry.

**2.2.2** Date of successful completion of competency test. The CNA Registry documents the date the individual successfully completed the competency test.

**2.2.2.1** Failure to work as CNA during 24-month period from date of completion of test. Failure to notify the CNA Registry of at least 8 hours of employment as a CNA during the 24-month period from the date of completion of the competency test shall result in the immediate removal from the list of active CNAs and bars future employment as a CNA until the individual submits an application for placement on the Registry and successfully completes the test for non-tradition CNAs, and the CNA Registry determines the individual is eligible for placement on the Registry.

**2.2.2.2** Minimum employment requirement. To comply with 2.2.2.1 above, the CNA must submit to the Registry documented proof of qualified employment for compensation for a minimum of eight [8] hours within the last twenty-four [24] consecutive months under the supervision of a registered professional nurse in a health care setting, in the capacity of a CNA on a full or part-time basis.

**2.2.3** Date approved for placement on the Registry. The CNA Registry documents the date the individual is approved for placement on the CNA Registry.

- 2.2.3.1** Renew listing before expiration of initial term. Failure to submit a completed Registry-approved renewal form and required documentation before the expiration of the initial term that a CNA is listed on the Registry shall result in the immediate removal from the list of active CNAs and bars future employment as a CNA until the individual submits a renewal form and the CNA Registry determines the individual is eligible for placement on the Registry.
- 2.2.3.2** Renew listing on CNA's birth date every 24 months after initial listing. To remain on the Registry, the CNA must submit a completed Registry-approved renewal form and required documentation on or before the CNA's birth date every 24 months, after initial listing. Failure to submit a timely renewal form, results in immediate removal from the list of active CNAs and bars future employment as a CNA until the CNA takes appropriate action pursuant to these rules to be reinstated on the Registry.
- 2.2.4** Notification of listing. The CNA Registry notifies the CNA in writing when the Registry documents the date the CNA is approved for placement on the list of active CNAs on the Registry.
- 2.2.5** Nursing school student on Registry. A qualified nursing school student who has been issued a "Certificate of Equivalent Training" may be placed on the list of active CNAs on the Registry, without further testing, if the Registry finds the individual is competent to function as a CNA. Section 1.13.5.
- 2.2.6** Qualified employment. Employment in a health care setting, under the supervision of a registered professional nurse, is recognized work for the purpose of qualifying for placement, and continued listing, on the CNA Registry. Section 1.7.
- 2.3 CNAs trained in Maine.** CNAs trained in Maine must submit at least the following information to determine eligibility for placement, or continued listing, on the Registry. (For CNAs trained in another jurisdiction, see Section 2.4.)
- 2.3.1** Application or renewal form and required documentation. CNAs must submit a completed, Registry-approved, application or renewal form and all required documentation before the Registry makes a decision regarding the CNA's eligibility for placement, or continued listing, on the Registry. Required documentation includes but is not limited to the following, as applicable:
- 2.3.1.1** Identity verification documentation. Information necessary to verify the identity of the individual, including:



- 2.3.1.1.1** Full name, including maiden name, and all previously held names.
- 2.3.1.1.2** Copy of Social Security Card;
- 2.3.1.1.3** Date of birth;
- 2.3.1.1.4** Current mailing address;
- 2.3.1.1.5** Copy of current driver's license or other suitable identification containing a photograph and signature.
- 2.3.1.2** Training verification documentation. Information necessary to verify the training and evaluation testing of the individual, including, as applicable:
- 2.3.1.2.1** On or after 10/9/91, a copy of the Certificate of Training issued by the training program or equivalent documentation of successful completion of the BON prescribed curriculum training program. Prior to 10/9/91, documentation of successful completion of a Maine Department of Education-approved training program.
- 2.3.1.2.2** Documentation of successful completion of the competency evaluation test.
- 2.3.1.2.3** A copy of a Certificate of Training or equivalent documentation, confirming that, at the time the course was taken, it met then existing BON requirements.
- 2.3.1.2.4** Documentation of 24 consecutive months of employment, between 12/19/1987 and 12/19/1989, at one or more Maine facilities for the same employer, and documentation of current employment by that same employer in one of the facilities.
- 2.3.1.2.5** Documentation of nursing assistant training in Maine prior to 1975.
- 2.3.1.2.6** CNAs employed by nursing facilities. CNAs employed by nursing facilities must submit documentation of completed in-service education along with other required documentation when submitting a completed Registry-approved application or renewal form.

**2.3.1.3** Criminal background check. A copy of the criminal background check secured by the training program as part of the admission process.

**2.3.1.3.1** Court records. Upon request, an applicant or a CNA must submit to the CNA Registry copies of court records for each criminal conviction the individual has sustained, either in Maine or in other jurisdictions, provided such records are available without cost.

**2.3.1.4** Employment verification documentation. Documentation from former and current employers verifying the dates and places (with full address) of employment as a CNA during the preceding 2 years.

**2.4 CNAs trained in another jurisdiction.** CNAs trained in another jurisdiction must submit at least the following information to determine eligibility for placement, or continued listing, on the Maine Registry. (CNAs trained in Maine, see Section 2.3).

**2.4.1** Application or renewal form and required documentation. A completed, Registry-approved, application or renewal form and all required documentation must be submitted by CNAs trained in another jurisdiction before the Maine Registry makes a decision regarding the CNA's eligibility for placement or continued listing, on the Registry. Required documentation includes but is not limited to the following, as applicable:

**2.4.1.1** Identity verification documentation. Information necessary to verify the identity of the individual, including:

**2.4.1.1.1** Full name, including maiden name, and all previously held names.

**2.4.1.1.2** Copy of Social Security Card;

**2.4.1.1.3** Date of birth;

**2.4.1.1.4** Current mailing address;

**2.4.1.1.5** Copy of current driver's license or other suitable identification containing a photograph and signature.

**2.4.1.2** Training verification documentation. Information necessary to verify the training and evaluation testing of the individual, including:

- 2.4.1.2.1** Equivalent training documentation. Documentation of CNA training in another jurisdiction that is equivalent to or greater than the requirements of the Maine BON prescribed curriculum for CNA training programs.
- 2.4.1.2.2** Equivalent competency testing documentation. Documentation of successful completion in another jurisdiction of an approved competency evaluation test that is equivalent to or greater than the requirements of Maine competency testing.
- 2.4.1.2.3** Documentation of at least 100 hours of training. Documentation of successful completion of a training program of at least 100 hours that meets OBRA '87 minimum requirements, but is less than the minimum number of training hours required by the Board of Nursing 02-380 C.M.R. Ch. 5 *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants*, may qualify a CNA to take the Bridge Examination. Section 3.2.2.
- 2.4.1.2.4** Education documentation. A copy of a high school diploma, a General Educational Development certificate (GED) or documentation of successful completion of ninth grade.
- 2.4.1.2.5** CNAs employed by nursing facilities. CNAs employed by nursing facilities must submit documentation of completed in-service education along with other required documentation when submitting a completed Registry-approved application or renewal form.
- 2.4.1.3** Criminal background check. A copy of a criminal background check, if available without cost to the CNA.
- 2.4.1.3.1** Court records. Upon request, an applicant or a CNA must submit to the CNA Registry copies of court records for each criminal conviction the individual has sustained, either in Maine or in other jurisdictions, provided such records are available without cost.
- 2.4.1.4** Employment verification documentation. Documentation from former and current employers verifying the dates and places (with full address) of employment as a CNA during the preceding 2 years.

**2.5 Employment restrictions.**

- 2.5.1 Conviction of crime in a health care setting.** Except as provided in Section 2.6, an individual may not be employed as a CNA in a health care setting, a personal care agency and placement agency, a temporary nurse agency, or an adult day services program, if that individual has been convicted in a court of law of a crime involving abuse, neglect, or misappropriation of property in a health care setting.
- 2.5.2 Conviction within the last 10 years.** Except as provided in Section 2.6, an individual may not be employed as a CNA in a health care setting, a personal care or placement agency, a temporary nurse agency, or an adult day services program, if that individual has been convicted of any of the following within the last 10 years:
- 2.5.2.1** A crime for which incarceration of three [3] years or more may be imposed under the laws of the state in which the conviction occurred; or
  - 2.5.2.2** A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.
- 2.5.3 Substantiated complaints.** An individual may not be employed as a CNA in a health care setting, a personal care agency or placement agency, a temporary nurse agency, or an adult day services program, if any of the following complaints against the CNA is substantiated.
- 2.5.3.1** Abuse or neglect. The CNA was the subject of a complaint involving abuse or neglect that was substantiated by the state survey agency and the substantiated complaint was entered on the CNA Registry; or
  - 2.5.3.2** Misappropriation of property. The individual was the subject of a complaint, involving the misappropriation of the property of a patient, client, or resident, in a health care setting that was substantiated by the state survey agency and the substantiated complaint was entered on the CNA Registry.
- 2.5.4 Prohibited UAP employment.** A CNA with a disqualifying annotation is barred from employment as an UAP in a personal care or placement agency, an adult day services program, a home health agency, a nursing facility, a hospital, an assisted housing program or a temporary nurse agency.

**2.6 Excluded from employment restrictions.**

- 2.6.1** Pre-June 1, 2003 convictions. The employment restrictions in Section 2.5 do not apply to an individual on the active Registry list prior to June 1, 2003, as long as the individual meets other CNA requirements and continues to maintain an active status on the Registry.
- 2.6.2** Class D and Class E convictions 10 years old and older. Class D and Class E convictions in Maine and other jurisdictions are not an employment restriction and are not included on the Registry if the conviction is ten [10] years old or older and did not involve, as a victim of the act, a patient, client, or resident of a health care setting..

**Section 3. Training and Competency Programs for CNAs.**

**3.1 Prescribed curriculum.** The Board of Nursing develops the prescribed curriculum utilized by training programs for CNAs. See *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants*, 02-380 C.M.R. Ch. 5 (2).

**3.2 Training and testing options.** Training and testing options include: the Maine CNA training program, the Bridge Examination, and the test for non-traditional CNAs.

**3.2.1 Maine CNA Training Program.** The Maine CNA training program includes the minimum number of training hours required by the Board of Nursing including classroom instruction, skills laboratory and supervised clinical practice as set out in the prescribed curriculum referred to in Section 3.1 of these rules.

**3.2.1.1 Student qualifications.** Student applying for admission to a CNA training program must submit documented proof of the following:

**3.2.1.1.1** Documentation of completion of the 9th grade of school. A high school diploma, or a high school equivalency diploma, is preferred; and

**3.2.1.1.2** Documentation of compliance with the minimum age requirement of 16 years; and

**3.2.1.1.3** Ability to read and write English. BON rules, 02-380 C.M.R. Ch. 5, section 2 (D) (1) (c).

**3.2.1.2 Notice of employment restrictions.** Prior to accepting the student's application for admission to the CNA training program, the program must notify each student-applicant concerning the employment restrictions in Section 2.5 of these rules.

**3.2.1.3 Criminal background check.** CNA training programs must secure, and pay for, a criminal background check on each individual who enrolls in the CNA training program on or after November 1, 2003. The student-applicant's current name and all previous names are checked during the criminal background check. A copy is given to the individual for attachment to an application for placement on the Registry as required by these rules.

**3.2.1.4 Maine CNA test.** Each student must satisfactorily complete the competency evaluation test. It is a 2-part test:

**3.2.1.4.1** Written or oral examination. The student chooses between a written or an oral examination; and

**3.2.1.4.2** Skills demonstration. The student must demonstrate an ability to successfully complete skills listed on the BON curriculum checklist.

**3.2.2 Bridge Examination.** The Bridge Examination is a BON prescribed competency testing process for qualified CNAs who have completed training programs in another jurisdiction of at least 100 hours, but less than the required number of training hours required by the Maine Board of Nursing.

**3.2.2.1** Requirements. In addition to applicable requirements in Section 2.4 of these rules, the CNA must submit the following documentation to the CNA Registry before a decision is made regarding the CNA's eligibility to take the Bridge Examination:

**3.2.2.1.1** Documentation of successful completion in another jurisdiction of a CNA training program of not less than 100 hours that met OBRA '87 CNA training requirements;

**3.2.2.1.2** Documentation of completion of the 9th grade of school. A high school diploma, or a high school equivalency diploma, is preferred;

**3.2.2.1.3** Documentation of compliance with the minimum age requirement of 16 years;

**3.2.2.1.4** Ability to read and write English. BON rules, 02-380 C.M.R. Ch. 5, section 3 (D) (1) (d); and

**3.2.2.1.5** Documentation of employment as a CNA for at least 32 hours per week for 3 out of the past 5 years.

**3.2.2.2** Temporary listing exception. A CNA who received training in another jurisdiction that does not meet the requirements for certification in Maine may request temporary listing on the Maine Registry, pending completion of the BON prescribed Bridge Examination. The temporary listing shall be in effect for a maximum of 4 months and shall not be renewed. BON rules, 02-380 C.M.R. Ch. 5, section 5 (B).

**3.2.3 Test for non-traditional CNAs.** The test for non-traditional CNAs may be taken by qualified CNAs, including but not limited to:

- 3.2.3.1** A CNA trained in Maine who has not worked as a CNA for at least the preceding 24 months; or
- 3.2.3.2** A CNA who received training in another jurisdiction that is at least equal to the Maine minimum of approved CNA training required by these rules; or
- 3.2.3.3** An individual trained as a CNA, or its equivalent, while serving in the United States Armed Services who completed training that is at least equal to the Maine minimum of approved CNA training required by these rules.

**3.2.4 Certificate of Training.** As applicable, a CNA must have a Certificate of Training, or its equivalent, as documentation of successful completion of an approved training program and successful completion of a competency evaluation test.

### **3.3 CNAs employed by nursing facilities.**

- 3.3.1** Nursing facility prohibited from charging employee for CNA training. An individual who is employed by, or who has received an offer of employment from, a nursing facility on or before the date the individual begins a CNA training program taught at the nursing facility, may not be charged for any portion of the program (including any fees for textbooks or other required course materials).
- 3.3.2** Nursing facility reimburses training costs. A CNA, who becomes employed by, or receives an offer of employment from, a nursing facility not later than 12 months after successfully completing a CNA training program or competency evaluation, is reimbursed by the nursing facility for the costs incurred for the training program or competency evaluation.
- 3.3.3** Nursing facility in-service education for CNAs. Nursing facilities must provide CNAs with no less than twelve (12) hours per year of in-service education (OBRA '87). Documentation of completed in-service education is given to the CNA.



**Section 4. CNA Registry Operation.**

- 4.1 Registry accessibility.** The Registry must be sufficiently accessible to meet the needs of the public, including but not limited to, health care providers, individual CNAs, health care consumers, and other state CNA Registries.
- 4.2 Registry administration.** The CNA Registry:
- 4.2.1** Determines a CNA applicant's eligibility for placement on the list of active CNAs on the Registry.
  - 4.2.2** Provides a list of eligible candidates to the administrator of a training program.
  - 4.2.3** Determines a CNA's eligibility to take the CNA Registry test for non-traditional nursing assistants.
  - 4.2.4** Reviews criminal background checks and annotates the applicant's or CNA's record on the Registry to include criminal convictions in accordance with Section 4.3.7 of these rules.
  - 4.2.5** Reviews the list of CNAs employed by a health care setting at the time of its survey. The Registry takes appropriate action if an employed CNA is not on the Registry's active list with no disqualifying annotation.
  - 4.2.6** Shall remove any criminal convictions considered a Class D or Class E criminal offense under Maine law that are at least ten years old or older, provided the conviction did not involve as a victim a patient, client, or resident of a health care setting.
  - 4.2.7** Responds to inquiries from the public, including but not limited to, health care providers, individual CNAs, health care consumers, the BON, and CNA Registries in other jurisdictions.
    - 4.2.7.1** The Registry must disclose, at a minimum, the following information about an individual to all requesters:
      - 4.2.7.1.1** Whether the individual is on the list of active CNAs on the Registry, without disqualifying annotation.
      - 4.2.7.1.2** The date the individual successfully completed the competency test.
      - 4.2.7.1.3** The date the individual was approved for placement on the Registry.

**4.2.7.1.4** Verification of employment as a CNA during the preceding 24 months.

**4.2.7.1.5** Whether the individual is annotated on the Registry for any of the following:

**4.2.7.1.5.1** criminal convictions;

**4.2.7.1.5.2** substantiated complaints of abuse, neglect or misappropriation of property of a patient, client or resident, the nature of the allegation, the evidence that led the survey agency to substantiate the complaint, the date of the hearing, if any, and the CNAs statement disputing the allegation, if any.

**4.2.7.2** The Registry must promptly provide individuals with all information about them that is contained in the Registry when adverse findings are placed on the Registry, and upon request. Individuals are given sufficient opportunity to correct any misstatements or inaccuracies contained on the Registry.

**4.3 Registry content.** The Registry must contain at least the following information for each applicant and CNA:

**4.3.1** Identity verification documentation. Sections 2.3.1.1 and 2.4.1.1.

**4.3.2** Training verification documentation. Sections 2.3.1.2 and 2.4.1.2.

**4.3.3** Documentation of successful completion of the competency evaluation must be included on the Registry within thirty (30) days of the date of successful completion.

**4.3.4** Employment verification documentation. Sections 2.3.1.4 and 2.4.1.4.

**4.3.5** Competency. The Registry determination that it finds the CNA is competent to function as a CNA.

**4.3.6** Substantiated complaints. Within 10 working days of final agency action regarding a finding of abuse, neglect, and misappropriation of property of a patient, client or resident, the following information is placed on the Registry. The information remains on the Registry permanently, unless documentation is obtained that the finding was made in error, the individual was found not guilty in a court of law, or the CNA Registry is notified of the individual's death.

- 4.3.6.1** Documentation of the state survey agency investigation, including the nature of the allegation and the evidence that led the state survey agency to substantiate the allegation of abuse, neglect or misappropriation of property.
- 4.3.7.2** The date of the hearing, if the CNA chose to appeal the state survey agency findings, and its outcome; and
- 4.3.6.3** The CNA's statement to the state survey agency disputing the allegation, if the CNA chose to submit one.
- 4.3.6.4** Exception. An individual may petition the department to remove a finding of neglect, no sooner than twelve (12) months after the date the neglect finding was documented on the CNA Registry. Section 6.2.
- 4.3.7** Criminal convictions. The Registry must contain information about the following criminal convictions:
- 4.3.7.1** Convictions of abuse, neglect or misappropriation of property of a patient, client, or resident in a health care setting.
- 4.3.7.2** All criminal convictions in all jurisdictions, except as provided in Section 4.3.7.3 of these rules.
- 4.3.7.3** Exception. Maine Class D and Class E convictions over 10 years old that did not involve as a victim of the act a patient, client or resident in a health care setting are not included on the Registry. This rule applies to equivalent convictions in other jurisdictions.
- 4.3.8** Information from other jurisdictions. The Maine CNA Registry must contain information received from CNA Registries in other jurisdictions.
- 4.3.9** Registry eligibility and renewal status. The Maine CNA Registry must contain at least the following eligibility and renewal status information regarding placement on the CNA Registry:
- 4.3.9.1** The date the CNA is placed on the list of active CNAs on the Registry
- 4.3.9.2** The date the Registry approves a CNA's completed renewal form for continued listing on the Registry.

**Section 5. Denial or Removal from the CNA Registry.**

- 5.1 Misrepresentation, deceit, or fraud on application or renewal form.** Placement on the active Registry list shall be denied, or a CNA shall be removed from the list of active CNAs on the Registry, based on the following:
- 5.1.1 Denial.** Placement on the active Registry list shall be denied when an individual knowingly submits an application or renewal form that contains misrepresentations concerning qualification for listing on the CNA Registry or in any way attempts to obtain placement on the Registry by deceitful or fraudulent means;
  - 5.1.2 Removal.** An individual shall be removed from the active Registry list if the individual is found to have gained placement on the Registry by knowingly submitting an application or renewal form that contained misrepresentations concerning qualification for listing on the CNA Registry or in any way attempted to obtain placement on the Registry by deceitful or fraudulent means.
- 5.2 Nondisclosure of conviction is misrepresentation.** For the purpose of these rules, misrepresentation includes, but is not limited to, the nondisclosure of criminal convictions by an applicant or CNA. Nondisclosure occurs when an applicant or CNA fails to comply with Section 2.3.1.3.1 of these rules.
- 5.3 Fraud or deceit in obtaining a Certificate of Training.** An individual who practices fraud or deceit in obtaining a Certificate of Training as a nursing assistant shall not be eligible for placement on the Maine CNA Registry. BON rules, 02-380 Code of Maine Rules, Chapter 5, section 6.

**Section 6. Petitions and Appeals**

**6.1 Petition for Reinstatement.** After removal from the active Registry list based on a fraudulent or deceitful application or renewal, an individual may petition DHHS, Division of Licensing and Regulatory Services, for reinstatement no sooner than twelve [12] months after the removal date was documented on the CNA Registry. Reinstatement is subject to the following:

**6.1.1** The removal was based on only one application or renewal that resulted in a finding of misrepresentation, deceit or fraud; and

**6.1.2** The reinstatement petition includes a new, updated application for placement on the Registry.

**6.1.3** The petition will be permanently denied if removal from the Registry was based on more than one application or renewal that resulted in findings of misrepresentation, deceit, or fraud while on the Registry or while pending before the Registry.

**6.2 Petition for Removal of a Finding of Neglect.** A CNA may petition DHHS, Division of Licensing and Regulatory Services, to remove a finding of neglect, no sooner than twelve [12] months after the date the neglect finding was documented on the CNA Registry. Removal is subject to the following:

**6.2.1** The finding of neglect was a one-time occurrence and the employment and personal history of the CNA does not reflect a pattern of abusive behavior or neglect; and

**6.2.2** The CNA submits a department-approved petition form to DHHS, Division of Licensing and Regulatory Services, that includes a short, clear statement by the CNA that contains the reasons why the CNA is eligible to have the neglect finding removed from the Registry. The CNA Registry decision shall be based upon a determination that:

**6.2.2.1** The employment and personal history of the CNA does not reflect a pattern of abusive behavior or neglect, and

**6.2.2.2** The neglect involved in the original finding was a one-time occurrence.

**6.3 Right to Appeal.** An individual may request an administrative hearing to appeal the following DHHS, Division of Licensing and Regulatory Services, decisions:

**6.3.1** Denial of an application or renewal for placement on the CNA Registry.

- 6.3.2** Removal from the active Registry list.
- 6.3.3** Denial of a petition for reinstatement.
- 6.3.4** Denial of a petition for removal of a finding of neglect from the Registry.
- 6.4. Administrative Hearing.** A person who is dissatisfied with certain actions or inactions of DHHS, Division of Licensing and Regulatory Services, may request an administrative hearing to review the matter, unless otherwise provided by law. The administrative hearing process is governed by the Maine Administrative Procedure Act (5 M.R.S.A. §8001 et. seq.) and the department's Administrative Hearings Regulations (10-144 C.M.R. Ch. 1).
- 6.5 Recommended Decision.** The administrative hearing officer makes a recommended decision that is forwarded to the Commissioner of DHHS. If a person is dissatisfied with the Recommended Decision, the person may submit “exceptions and responses” to the Commissioner. The Commissioner has final decision making authority.
- 6.6 Judicial Review.** A person who is aggrieved by a final agency action may be entitled to judicial review in the Superior Court.

**STATUTORY AUTHORITY:**

22 MRSA §§ 42, and 1812-G.

22-A M.R.S.A. §205.

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